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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,067	10/14/2003	Gordon L. Brown JR.	30922-2	4373
7590 John B. Hardaway, III NEXSEN PRUET JACOBS & POLLARD, LLC P.O. Box 10107 Greenville, SC 29603			EXAMINER DONNELLY, JEROME W	
			ART UNIT 3764	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 03/26/2007	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/685,067	BROWN, GORDON L.
	<b>Examiner</b>	<b>Art Unit</b>
	Jerome W. Donnelly	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12/01/04

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) \_\_\_\_\_ is/are pending in the application. 1-18  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected. 1-15 and 17

7) Claim(s) \_\_\_\_\_ is/are objected to. 16 and 18

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

Art Unit: 3764

Claims 16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Benach '6872174.

Claims 1-9 are rejected for the same reasons as set forth in the rejection of the same claims in the Office Action dated 10/12/2006 and further in view of Benach.

Brown discloses the device of claims 1-9 substantially as claimed absent the device including a round cavity.

Benach teaches providing round cavities in round plastic tubing wherein the device is used to exercise, said device being bendable and having closures in the form of handles.

Given the above teaching of Benach of including a round cavity the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the cavity of Brown of a round shape as one of several shapes known in the manufacture of tubing material; unless the applicant can provide the criticality of round.

In regard to claim 17 note fig. 4.

In response to applicant argument as to the positive bonding of the sheath of Brown Jr. to the filament matrix Brown Jr. only teaches that the sheath (19) and matrix 16 may be bonded, not that is positively is. Brown also teaches a .075-inch clearance.

Claims 10-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Benach and further in view of Truchelut.

The examiner notes that it would have been obvious to one of ordinary skill in the art to provide padding on the device of Brown for the purpose of allowing the user to place his device against the body and to enhance user comfort in view of Truchelut.

In regard to claim 15 the examiner notes that it would have been obvious to manufacture the rod of Brown of a pultrusion process. See col. 8 line 37.

Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Benach and further in view of Cho.

In regard to claims 11-13 the examiner notes, that to provide at least three rods members vs one rod member is obvious for the purpose of providing additional resistance to the device of Brown modified in view of Cho Fig. 2.

In regard to claim 14, the claimed functionally of the device inherently causes an applied pressure to the edges of the rod.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

